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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Molly Howatt,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-23-00308-PHX-DJH

**ORDER**

15 Plaintiff Molly Howatt (“Plaintiff”) seeks judicial review of a decision by the Social  
16 Security Administration (“SSA”) Commissioner (the “Commissioner”) denying her  
17 application for Supplemental Security Disability Insurance (“SSDI”) benefits under the  
18 Social Security Act, 42 U.S.C. § 301 *et seq.* (the “Act”). (Doc. 1). Plaintiff filed her  
19 Opening Brief (Doc. 11), the Commissioner filed a Response (Doc. 13), and Plaintiff filed  
20 a Reply (Doc. 14). Upon review of the briefs and the Administrative Record  
21 (Doc. 8 “AR”), the Court affirms the Administrative Law Judge’s (“ALJ”)   
22 November 23, 2021, decision (AR at 12–25).

23 **I. Background**

24 On February 26, 2020, Plaintiff filed an application for SSDI benefits under Title II  
25 of the Act, alleging a disability onset date of June 1, 2019. (*Id.* at 15). Plaintiff was fifty  
26 years old at the time of her alleged onset date and has a high school education. (*Id.* at 34–  
27 25). Her past relevant work includes employment as a receptionist in a medical clinic.  
28 (*Id.* at 34). Plaintiff claims she is unable to work due to enlarged heart, possible lymphoma,

1 Sjogren's syndrome, hypothyroid, and residuals from radiation and chemo for breast  
2 cancer. (*Id.* at 61–62).

3 Plaintiff's claims were initially denied on August 7, 2020, and upon reconsideration  
4 on April 15, 2021. (*Id.* at 15). After holding a hearing, the ALJ issued an unfavorable  
5 decision on November 23, 2021, (AR at 12–25) (the "November Decision").

## 6 **II. The ALJ's Five Step Process**

7 To be eligible for Social Security benefits, a claimant must show an "inability to  
8 engage in any substantial gainful activity by reason of any medically determinable physical  
9 or mental impairment which can be expected to result in death or which has lasted or can  
10 be expected to last for a continuous period of not less than 12 months."  
11 42 U.S.C. § 423(d)(1)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).  
12 The ALJ follows a five-step process<sup>1</sup> to determine whether a claimant is disabled under the  
13 Act:

14 The five-step process for disability determinations begins, at the first and  
15 second steps, by asking whether a claimant is engaged in "substantial gainful  
16 activity" and considering the severity of the claimant's impairments.  
17 *See* 20 C.F.R. § 416.920(a)(4)(i)–(ii). If the inquiry continues beyond the  
18 second step, the third step asks whether the claimant's impairment or  
19 combination of impairments meets or equals a listing under  
20 20 C.F.R. pt. 404, subpt. P, app. 1 and meets the duration requirement.  
21 *See id.* § 416.920(a)(4)(iii). If so, the claimant is considered disabled and  
22 benefits are awarded, ending the inquiry. *See id.* If the process continues  
beyond the third step, the fourth and fifth steps consider the claimant's  
"residual functional capacity"<sup>2</sup> in determining whether the claimant can still  
do past relevant work or make an adjustment to other work.  
*See id.* § 416.920(a)(4)(iv)–(v).

23 *Kennedy v. Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013); *see also* 20 C.F.R. § 404.1520(a)–  
24 (g). If the ALJ determines no such work is available, the claimant is disabled.  
25 20 C.F.R. § 404.1520(a)(4)(v).

26 <sup>1</sup> The claimant bears the burden of proof on the first four steps, but the burden shifts to the  
27 Commissioner at step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

28 <sup>2</sup> A claimant's residual functional capacity is defined as their maximum ability to do  
physical and mental work activities on a sustained basis despite limitations from their  
impairments. *See* 20 C.F.R. §§ 404.1545(a), 404.1520(e), 416.920(e).

1 The ALJ's findings in the November Decision are as follows:

2 At step one, the ALJ found that Plaintiff met the insured status requirements of the  
3 Act on September 30, 2020, and that she has not engaged in substantial gainful activity  
4 since June 1, 2019, her alleged onset date. (AR. at 14). At step two, the ALJ found Plaintiff  
5 has the following severe impairments: coronary artery disease with abdominal aortic  
6 aneurysm, lymphadenopathy, and Sjogren's syndrome. (*Id.* at 18 (citing 20 C.F.R. §  
7 416.920(c)). At step three, she determined Plaintiff does not have an impairment or  
8 combination of impairments that meets or medically equals an impairment listed in  
9 Appendix 1 to Subpart P of 20 C.F.R. Part 404. (*Id.* at 18–19).

10 At step four, the ALJ found Plaintiff had the residual functional capacity ("RFC")  
11 through her date last insured to perform sedentary work<sup>3</sup> "with no climbing of ladders,  
12 ropes, or scaffolds; occasional climbing of ramps and stairs; and she would need to avoid  
13 exposure to workplace hazards such as heights and heavy machinery." (*Id.* at 19). In  
14 determining Plaintiff's RFC, the ALJ stated she "considered all [of Plaintiff's] symptoms  
15 and the extent to which these symptoms can reasonably be accepted as consistent with the  
16 objective medical evidence and other evidence, based on the requirements of 20 § C.F.R.  
17 404.1529 and [Social Security Ruling] 16-3p." (*Id.*) The ALJ also considered the medical  
18 opinions and prior administrative medical findings in accordance with the requirements of  
19 20 C.F.R. § 404.1520c. (*Id.*) Given her RFC assessment, the ALJ determined Plaintiff  
20 was capable of performing past relevant work as a receptionist and a medical secretary.  
21 (*Id.* at 24–25). The ALJ therefore did not reach step five and deemed Plaintiff not disabled  
22 from June 1, 2019, her alleged onset date, through September 30, 2020, her last date  
23 insured. (*Id.* at 25 (citing 20 C.F.R. § 404.1520(f)).

24 The SSA Appeals Council denied Plaintiff's request for review of the  
25 November Decision, thus adopting the Decision as the agency's final decision. (*Id.* at 1–

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26 <sup>3</sup> "Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting  
27 or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is  
28 defined as one which involves sitting, a certain amount of walking and standing is often  
necessary in carrying out job duties. Jobs are sedentary if walking and standing are  
required occasionally and other sedentary criteria are met." 20 C.F.R. §§ 404.1567(a);  
416.967(a).

3). This appeal followed. On February 20, 2023, Plaintiff filed a Complaint under 42 U.S.C. §§ 405(g), 1383(c)(3) requesting judicial review and reversal of the Commissioner’s decision. (Doc. 1).

### III. Standard of Review

In determining whether to reverse a decision by an ALJ, the district court reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). “An ALJ’s disability determination should be upheld unless it contains legal error or is not supported by substantial evidence.” *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014) (citing *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)); 42 U.S.C. §§ 405(g), 1383(c)(3)). “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance; it is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.” *Garrison*, 759 F.3d at 1009 (9th Cir. 2014) (internal citation omitted). To determine whether substantial evidence supports a decision, the Court must consider the record as a whole and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

The ALJ is responsible for resolving conflicts, ambiguity, and determining credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ must “set forth the reasoning behind its decisions in a way that allows for meaningful review.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015). This is because district courts may only review those reasons the ALJ places on the record and cannot speculate what the ALJ’s reasoning might have been based on other evidence available. *Bray v. Commissioner of Social Security Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009) (“Long-standing principles of administrative law require [the court] to review the ALJ’s decision based on the reasoning and factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.”). Generally, “[w]here the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion

1 must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations  
2 omitted).

3 “Harmless error principles apply in the Social Security Act context.” *Molina v.*  
4 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains  
5 substantial evidence supporting the ALJ’s decision, and the error does not affect the  
6 ultimate nondisability determination. *Id.* Typically, the claimant bears the burden of  
7 showing that an error is harmful. *Id.* at 1111 (citing *Shinseki v. Sanders*, 556 U.S. 396,  
8 409 (2009)).

#### 9 **IV. Discussion**

10 Plaintiff appeals the ALJ’s decision rendering her not disabled from June 1, 2019,  
11 her alleged onset date, through September 30, 2020, her last date insured (the “Intervening  
12 Timeframe”). Plaintiff argues the ALJ’s reasons for discounting her Sjogren syndrome<sup>4</sup>  
13 symptom testimony of fatigue and myalgia were unsupported for three reasons: (1) the  
14 ALJ’s review of the medical record was selective and she did not adequately point to areas  
15 that were inconsistent with Plaintiff’s claimed symptoms (Doc. 11 at 8–10); (2) the ALJ  
16 erred when relying on Plaintiff’s treatment regimen (*id.* at 12–13); and (3) the ALJ erred  
17 when relying on Plaintiff’s daily activities (*id.* at 9–12). As a result, Plaintiff contends the

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19 <sup>4</sup> Sjogren’s syndrome is considered under Listing 14.10. of 20 C.F.R. Part 404, Subpart P, Appendix 1:

20 [] Sjogren’s syndrome is an immune-mediated disorder of the exocrine  
21 glands. Involvement of the lacrimal and salivary glands is the hallmark  
22 feature, resulting in symptoms of dry eyes and dry mouth, and possible  
23 complications, such as corneal damage, blepharitis (eyelid inflammation),  
24 dysphagia (difficulty in swallowing), dental caries, and the inability to speak  
25 for extended periods of time. Involvement of the exocrine glands of the upper  
26 airways may result in persistent dry cough. [] Many other organ systems  
27 may be involved, including musculoskeletal (arthritis, myositis), respiratory  
28 (interstitial fibrosis), gastrointestinal (dysmotility, dysphagia, involuntary  
weight loss), genitourinary (interstitial cystitis, renal tubular acidosis), skin  
(purpura, vasculitis), neurologic (central nervous system disorders, cranial  
and peripheral neuropathies), mental (cognitive dysfunction, poor memory),  
and neoplastic (lymphoma). Severe fatigue and malaise are frequently  
reported. Sjögren’s syndrome may be associated with other autoimmune  
disorders (for example, rheumatoid arthritis or SLE); usually the clinical  
features of the associated disorder predominate.

20 C.F.R. Part 404, Subpart P, Appendix 1, Listing 14.10.

ALJ failed to account for the “total limiting effects” of the impairments caused by her Sjogren’s syndrome in her RFC. (*Id.* at 4). The Commissioner disagrees, arguing the ALJ reasonably determined that Plaintiff’s symptoms allowed her to perform a reduced range of sedentary work, and properly accounted for these limitations in the RFC. (Doc. 13 at 5).

The Court will set forth the applicable legal standards before turning to each of Plaintiff’s arguments.

### **A. Legal Standards**

An ALJ must perform a two-step analysis when determining whether a claimant’s testimony regarding subjective pain or symptoms is credible. *Lingenfelter*, 504 F.3d at 1035–1036 (9th Cir. 2007). First, the ALJ must determine whether Plaintiff presented objective medical evidence of an impairment that could reasonably be expected to produce the symptoms alleged. *Garrison*, 759 F.3d at 1014. “In this analysis, the claimant is not required to show ‘that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.’ ” *Id.* (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)). Second, if there is no evidence of malingering, the ALJ may reject the Plaintiff’s symptom testimony only by giving specific, clear, and convincing reasons. *Id.* at 1015; *Brown-Hunter*, 806 F.3d at 488–89. “This is not an easy requirement to meet: ‘The clear and convincing standard<sup>5</sup> is the most demanding required in Social Security cases.’ ” *Garrison*, 759 F.3d at 1015 (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). “The standard isn’t whether [the reviewing] court is convinced, but instead whether the ALJ’s rationale is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022)

To determine whether a claimant’s testimony regarding the severity of her

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<sup>5</sup> The Commissioner contends that the clear and convincing standard is inconsistent with the deferential substantial evidence standard set forth in 42 U.S.C. § 405(g) and agency regulations and rulings specifying the rationale its adjudicators should provide in support of their findings. (Doc. 13 at n.7). The Commissioner further states the issue need not be resolved in this case because “the ALJ’s reasons suffice under any standard.” (*Id.*) In any event, the Court will apply the clear and convincing standard according to binding Ninth Circuit case law.



1 symptoms is credible, an ALJ may consider the following:

- 2 (1) ordinary techniques of credibility evaluation, such as the claimant's  
3 reputation for lying, prior inconsistent statements concerning the  
4 symptoms, and other testimony by the claimant that appears less than  
5 candid;
- 6 (2) unexplained or inadequately explained failure to seek treatment or to  
7 follow a prescribed course of treatment; and
- 8 (3) the claimant's daily activities.

9 *Smolen*, 80 F.3d at 1284. An ALJ may also consider the claimant's work record, and the  
10 observations of treating and examining physicians and other third parties regarding "the  
11 nature, onset, duration and frequency of claimant's symptoms, and precipitating and  
12 aggravating factors, functional restrictions caused by the symptoms, and the claimant's  
13 daily activities." *Id.* "General findings are insufficient; rather, the ALJ must identify what  
14 testimony is not credible and what evidence undermines the claimant's complaints."  
15 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014).

#### 16 **B. Plaintiff's Symptom Testimony**

17 At issue is Plaintiff's testimony that the fatigue and myalgia she experiences from  
18 her Sjogren's syndrome prevented her from working during the Intervening Timeframe.  
(Doc. 11 at 3). The ALJ summarized Plaintiff's relevant symptom testimony as follows:

19 [Plaintiff] alleged her ability to lift is limited to maybe ten pounds because  
20 she does not have the strength to hold things for long; her ability to sit is  
21 limited to twenty minutes, but sitting for a long time affects her back (she  
22 acknowledged she is not being treated for back pain); and her ability to walk  
23 is limited to twenty minutes on a good day. She acknowledged she is able to  
24 do some chores, but stated she has to plan ahead due to fatigue. [Plaintiff]  
25 testified to dry eyes, which sometimes interferes with her activities, and for  
26 which she has to use eye drops or rest her eyes for ten minutes. She expects  
27 this would happen five or six times in a workday. With her fatigue, she feels  
28 she loses words and thoughts. Her memory and concentration are affected.  
Her hands get tired if she writes for more than a minute. The claimant alleged  
that if she were working a sit-down job, she would require rest breaks five or  
six times a day for fifteen minutes to half an hour.

[Plaintiff] testified that she was exercising four or five hours in the gym in  
the fall of 2019, and hiking in the spring, summer, and fall, but began do less

1 at the gym in the beginning of 2020. She still goes to the gym, but if she  
2 works out a couple days in a row, she cannot do much after that. [Plaintiff]  
3 also acknowledged taking two vacations in 2019, and going to Arizona a  
4 couple times last year (2020). Prior to that, she would go to the coast for a  
5 long weekend. [Plaintiff] testified she does not have side effects of  
6 medication.

7 (AR at 20). (*See also id.* at 44–54). The ALJ also considered third-party statements from  
8 Plaintiff’s husband that she experienced “progressively worsening fatigue, unpredictable  
9 energy levels, and declining mobility. (*Id.* at 24 (citing Exh. 13E)).

10 At the first step of the symptom testimony analysis, the ALJ determined that  
11 “[Plaintiff’s] medically determinable impairments could reasonably be expected to cause  
12 the alleged symptoms.” (*Id.* at 20). However, at the second step, the ALJ concluded that  
13 “[Plaintiff’s] statements concerning the intensity, persistence and limiting effects of her  
14 alleged symptoms are not entirely consistent with the medical evidence and other evidence  
15 in the record[.]” (*Id.*) The ALJ particularly took issues with the extent of Plaintiff’s  
16 claimed fatigue, stating that “[w]hile fatigue presents in the records as a ‘major complaint,’  
17 the [Plaintiff’s] statements regarding the severity of her symptoms do not suggest greater  
18 limitation than to the sedentary exertional level.” (*Id.* at 20–21).

19 Plaintiff argues her testimony described greater limitations due to her Sjogren’s  
20 syndrome than those reflected in the ALJ’s RFC, and the ALJ erred by discounting her  
21 testimony based on inconsistencies with the medical record, her decision to decline  
22 treatment through medication, and her daily activities.

### 23 C. Objective Medical Records

24 The Court first addresses the ALJ’s discussion of objective medical records. The  
25 ALJ relied on a November 13, 2020, Sleep Apnea Assessment by nurse practitioner  
26 Christopher Guiley (“NP Guiley”) (AR at Exh. 12F)) to undermine the severity of  
27 Plaintiff’s claimed physical and mental symptoms of fatigue. (*Id.* at 21). The ALJ cited to  
28 Plaintiff’s sleep questionnaire therein, where she indicated to NP Guiley that she had a  
moderate chance of dozing when lying down to rest, and would never doze off in



1 circumstances where falling asleep wasn't appropriate. (*Id.* at 21). The ALJ adopted NP  
2 Guiley's recommendation in the RFC that Plaintiff should "avoid operating any motor  
3 vehicles or machinery, or participating in hazardous activities if at all sleepy" but  
4 emphasized that there were "no other concerns regarding activity restriction associated  
5 with fatigue" in his assessment (*Id.*) The ALJ further noted the NP Guiley recorded  
6 Plaintiff's reports that she had "a little" difficulty concentrating and remembering things,  
7 but found that " 'a little' does not suggest true functional limitation." (*Id.*) The ALJ also  
8 acknowledged that while Plaintiff's June 13, 2020 and December 15, 2020, Function  
9 Reports (*id.* at Exhs. 4E; 9E) (the "2020 Function Reports") reported her "alleged fatigue  
10 contributed to periodic memory and concentration lapse," the overall impression was that  
11 Plaintiff had "no more than mild impairment in mental functioning and no true functional  
12 limitation in her basic mental work abilities." (*Id.* at 21). Last, the ALJ provided a detail  
13 summary of the January 22, 2021, Assessment by Caroline McCulley M.D. ("MD  
14 McCulley) through (*id.* at Exh. 11F), noting various normal findings on Plaintiff's  
15 Sjogren's syndrome, including: no acute distress; no cervical supraclavicular  
16 lymphadenopathy; no significant tenderness or synovitis in Plaintiff's fingers, hands,  
17 wrists, or elbow; full range of motion in shoulders; normal flexion and extension in knee  
18 with no effusions; no significant pain with hip rotation; no abnormal rashes; and no end-  
19 organ involvement. (*Id.* at 22 (citing Exh. 11F)).

20 The Commissioner argues the ALJ adequately identified areas in the medical record  
21 that were inconsistent with Plaintiff's testimony of severe fatigue. (Doc. 13 at 8–11). The  
22 Commissioner further contends the ALJ properly relied on the November 13, 2020, Sleep  
23 Apnea Assessment, 2020 Function Reports, and January 22, 2021, Assessment because  
24 "the record shows little evidence of medical evaluations of Plaintiff's Sjogren's syndrome  
25 prior to her date last insured of September 30, 2020" and allegations of her fatigue only  
26 began in October 2020, which is after the Intervening Timeframe. (*Id.* at 8). Plaintiff  
27 disagrees, citing to a series of records that evaluated her complaints of fatigue since  
28 September 2019. (Docs. 14 at 3; 11 at 8–9). Plaintiff contends the ALJ failed to discuss

1 these records, which are relevant to her RFC during the Intervening Timeframe and  
2 otherwise consistent with her testimony. The Commissioner rebuts that although these  
3 treatment notes show a diagnosis of Sjogren’s syndrome, they “provide no information of  
4 how this condition affected Plaintiff’s functional abilities. (Doc. 13 at 8). The Court agrees  
5 with Plaintiff.

6 To start, the ALJ erred when relying on the absence of evidence corroborating  
7 Plaintiff’s claims of severe fatigue to justify the conclusion that Plaintiff’s testimony was  
8 inconsistent with the record. The ALJ emphasized that the November 13, 2020 Sleep  
9 Apnea Assessment indicated “no other concerns regarding activity restriction associated  
10 with fatigue,” that Plaintiff’s Function Reports signaled “no more than mild impairments  
11 in mental functioning due to fatigue,” and that the Patient Chart established normal findings  
12 with respect to Plaintiff’s Sjogren’s syndrome. But an ALJ may not “reject a claimant’s  
13 subjective complaints based solely on a lack of medical evidence to fully corroborate the  
14 alleged severity of [an impairment]” because “testimony may establish greater limitations  
15 than can medical evidence alone. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)  
16 (citing Social Security Ruling (S.S.R.) 96–7p (1996)). Nor can an ALJ “effectively render  
17 a claimant’s subjective symptom testimony superfluous by demanding positive objective  
18 medical evidence fully corroborating every allegation within the subjective testimony.”  
19 *Smartt*, 53 F.4th at 495. To the contrary, the medical records cited to by the ALJ confirmed  
20 Plaintiff’s complaints of fatigue. For example, the purpose of the November 13, 2020,  
21 Sleep Apnea Assessment was to “to rule out obstructive sleep apnea as a *potential cause*  
22 contributing to her excessive fatigue over the past year” (AR at 721) (emphasis added);  
23 (*see also id.* at 721 (“Chief Complaint: Fatigue”), 728 (indicating Plaintiff as a “62-year-  
24 old female with Sjogren’s syndrome and morbid obesity (weight 244 pounds-BMI 40.6),  
25 has snoring, witnessed apneas, insomnia and chronic fatigue”); 745 (“[Plaintiff] continues  
26 to have excess fatigue”)).

27 Moreover, the Commissioner’s position that Plaintiff’s fatigue only began in  
28 October 2020—after the Intervening Timeframe—is inaccurate. Plaintiff raises that

1 Jessica Morgan M.D. (“Dr. Morgan”) first assessed her with myalgia, myositis, and fatigue  
2 in September 2019 (*id.* at 496–97), and later connected those symptoms with Sjogren’s  
3 syndrome in April 2020 (*id.* at 438). This connection was made after Heather Hansen-  
4 Dispenza, M.D. (“Dr. Hansen-Dispenza”) diagnosed Plaintiff in November 2019 with  
5 primary Sjogren’s syndrome accompanied by high titer autoantibodies, leukopenia, sicca,  
6 myalgias, fatigue, and inflammatory arthritis symptoms. (*Id.* at 348). The Commissioner  
7 acknowledges Dr. Hansen-Dispenza’s diagnoses, but contends there were no treatment  
8 notes further explaining how this condition affected Plaintiff’s functional abilities.  
9 (Doc. 13 at 8). But as explained above, the absence of fully corroborating evidence is not  
10 a proper basis for finding Plaintiff’s testimony inconsistent with the overall record.  
11 *See Burch*, 400 F.3d at 681; *see Smartt*, 53 F.4th at 495. The objective medical record  
12 shows Plaintiff continued to see Dr. Morgan for excessive fatigue and muscle fatigue  
13 during the Intervening Timeframe from March–November 2020. (AR at 444 (noting “extra  
14 symptoms of myalgia and fatigue”), 438 (same), 430, (same), 425 (same), 633 (same)).  
15 And although the ALJ cited to Dr. Morgan’s November 2020 assessment notes in passing  
16 (*See id.* at 22 (citing Exh. 15F)), the ALJ did not engage in any discussion of the relevant  
17 assessments made during the Intervening Timeframe when discounting Plaintiff’s  
18 symptom testimony.

19 In sum, the Court finds the ALJ’s failed to set forth clear and convincing reasons  
20 for her conclusion that Plaintiff’s testimony was inconsistent with the medical record.  
21 However, for the reasons discussed *infra*, that error was harmless and the ALJ’s decision  
22 will still be upheld. *See Molina*, 674 F.3d at 1115 (An error is harmless if there remains  
23 substantial evidence supporting the ALJ’s decision, and the error does not affect the  
24 ultimate no disability determination).

#### 25 **D. Plaintiff’s Decision to Stop Treatment**

26 The Court proceeds to consider the ALJ’s discussion of Plaintiff’s efforts to seek  
27 treatment for her Sjogren’s syndrome. The Commissioner contends the ALJ properly  
28 found Plaintiff’s decision to decline medication contradicted the extent of her alleged

1 fatigue and myalgia. (Doc. 13 at 11–13). The Commission argues Plaintiff’s ability to  
2 manage her symptoms with lifestyle changes alone implies the severity of her symptoms  
3 did not prevent her from performing sedentary work. (*Id.* at 13). Plaintiff opposes, arguing  
4 her lymphoma justifies her decision not to take immunosuppressant for treatment.  
5 (Doc. 11 at 3).

6 The Social Security Regulations provide that “if the frequency or extent of the  
7 treatment sought by an individual is not comparable with the degree of the individual’s  
8 subjective complaints . . . we may find the alleged intensity and persistence of an  
9 individual’s symptoms are inconsistent with the overall evidence of record.” S.S.R. 16-3p.  
10 Indeed, an ALJ may consider a claimant’s “failure to seek treatment or to follow a  
11 prescribed course of treatment” in discrediting her symptom testimony. *Molina*, 674 F.3d  
12 at 1112 (quoting *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1224 n.3 (9th Cir. 2010)).  
13 “[A]n unexplained, or inadequately explained, failure to seek treatment or follow a  
14 prescribed course of treatment” may serve as a sufficient reason for an adverse credibility  
15 determination. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (citing 20 C.F.R. §  
16 404.1530(c) (1988)); *see also Burch*, 400 F.3d at 681 (holding that a claimant’s failure to  
17 seek treatment for back pain, depression, and fatigue was “powerful evidence” regarding  
18 the extent of her conditions). However, an ALJ “will not find an individual’s symptoms  
19 inconsistent with the evidence in the record on this basis without considering possible  
20 reasons he or she may not comply with treatment or seek treatment consistent with the  
21 degree of his or her complaints.” *Wilmot v. Comm’r of Soc. Sec. Admin.*, 2022 WL  
22 18810954, \*5 (D. Ariz. Nov. 17, 2022), *report and recommendation adopted*, 2023 WL  
23 2140483 (D. Ariz. Feb. 21, 2023) (quoting S.S.R. 16-3p).

24 Here, the ALJ concluded that Plaintiff’s efforts to seek treatment for her myalgias  
25 did not support her testimony regarding difficulty sitting, standing, walking, and using her  
26 hands. (AR at 20, 22). The ALJ relied on Dr. McCulley’s May 21, 2021, Assessment  
27 (*id.* at Exh. 14F), which stated that Plaintiff’s aches and pains were tolerable while she was  
28 on meloxicam. (AR at 22). Plaintiff, however, expressed she wished to avoid

1 “unnecessary” medication out of concern for her liver and kidneys, and opted to focus on  
2 healthy lifestyle changes in lieu of medication. (*Id.*) In light of Plaintiff’s decline, the ALJ  
3 reasoned that Plaintiff’s pain level did not require management by medication. (*Id.*) The  
4 ALJ further found Plaintiff’s symptom testimony lacked credibility because her Sjogren’s  
5 syndrome has not required aggressive therapy, has not involved end organ involvement,  
6 and entailed treatments focused on symptom management. (*Id.* at 22). The ALJ also cited  
7 to instances in the medical record showing that Plaintiff’s Sjogren’s syndrome symptoms  
8 improved while taking Plaquenil (hydroxychloroquine) (*id.* at 20 (citing Exhs. 1A; 4A)),  
9 yet Plaintiff similarly decided to wean off medication (*id.* at 343, 349, 356).

10 The ALJ’s conclusion that Plaintiff’s decision to stop treatment through Plaquenil  
11 and meloxicam undermined the severity of her claimed fatigue and myalgia is supported  
12 by substantial evidence. The medical record shows that Plaintiff benefitted from Plaquenil  
13 and meloxicam. (*Id.* at 288 ([“Plaintiff’s] fatigue is lifting since starting the Plaquenil”),  
14 785 (“[Plaintiff w]as taking meloxicam for straight 6 wks initially, felt it was working  
15 pretty well”). The ALJ noted that Plaintiff opted to “stop taking the medication all together  
16 out of unspecified concerns for her liver and kidneys” and characterized the medication as  
17 “unnecessary.” (*Id.* at 22). Thus, the Court finds the ALJ considered Plaintiff’s reasons  
18 for stopping medication, and adequately explained why it contradicted her symptom  
19 testimony. *See Burch*, 400 F.3d at 681. Plaintiff indeed testified at the hearing that she  
20 was not taking any medication for her Sjogren’s syndrome, and she declined knowing any  
21 medical reason why she cannot take immunosuppressants. (*Id.* at 44, 49). Therefore, the  
22 ALJ’s decision to discount Plaintiff’s symptom testimony in light of her decision to stop  
23 taking medication to manage her symptoms of Sjogren’s syndrome is supported by  
24 substantial evidence. *See Molina*, 674 F.3d at 1112.

#### 25 **E. Daily Activities**

26 Last, the Court turns to the ALJ’s discussion of Plaintiff’s daily activities. A  
27 plaintiff’s ability to carry out “daily activities may be grounds for an adverse credibility  
28 finding if a claimant is able to spend a substantial part of his day engaged in pursuits

1 involving the performance of physical functions that are transferable to a work setting.”  
 2 *Orn*, 495 F.3d at 639 (internal quotations and citations omitted). “The ALJ must make  
 3 ‘specific findings relating to the daily activities’ and their transferability to conclude that a  
 4 claimant’s daily activities warrant an adverse credibility determination.” *Id.* (quoting  
 5 *Burch*, 400 F.3d at 681). There are two grounds for using daily activities to form the basis  
 6 of an adverse credibility determination: (1) when the plaintiff’s described activities  
 7 contradict his other testimony; and (2) when the plaintiff’s activities “meet the threshold  
 8 for transferable work skills.” *Id.* (citing *Fair*, 885 F.2d at 603); *see also Molina*, 674 F.3d  
 9 at 1113 (“Even where those activities suggest some difficulty functioning, they may be  
 10 grounds for discrediting the claimant’s testimony to the extent that they contradict claims  
 11 of a totally debilitating impairment”).

12 The ALJ summarized Plaintiff’s activities as follows:

13 [Plaintiff] can perform simple household chores by spreading tasks out and  
 14 she can pay attention for two hours at a time. She prepares meals, pays bills  
 15 and manages funds, takes medications, shops in store and by mail, attended  
 16 church until “the quarantine” and the unique circumstances of the COVID-  
 17 19 pandemic, goes to the gym where she has a group of friends she used to  
 18 go for long walks with, stays in touch with family, and cares for her husband  
 19 and dog (Exhibit 4E).

20 . . . .

21 The claimant testified she only recently stopped boarding dogs in the summer  
 22 of 2021 because she could no longer walk them. This suggests she was able  
 23 to walk the dogs (which she boarded one at a time) and otherwise provide  
 24 care, for most of the period since her alleged onset date. In addition, she  
 25 testified she continues to go to the gym, although she cannot do as much as  
 26 she used to, and has had a “couple” trips to Arizona and the coast since the  
 27 alleged onset of disability.

28 (AR at 21–22). The ALJ concluded that Plaintiff’s “testimony regarding boarding dogs,  
 and travel suggested her fatigue would not interfere with her ability to stay on task in a sit-  
 down job.” (*Id.* at 21). Plaintiff argues the ALJ’s conclusion is not supported by substantial  
 evidence because “these sporadic activities, on their face, even as the ALJ described



1 them, do not demonstrate that she can work 8 hours a day, 5 days a week.” (Doc. 11 at 12).  
2 The Court disagrees.

3 The ALJ sufficiently articulated her reasonings for why Plaintiff’s activities  
4 undermined credibility of her alleged fatigue. The ALJ explained that Plaintiff’s ability to  
5 walk and provide care for dogs as part-time work during the Intervening Timeframe  
6 suggest her chronic fatigue was not as severe as she claimed. This finding is supported by  
7 substantial evidence because the ALJ noted how the activities were contrary to Plaintiff’s  
8 symptom testimony and entailed skills that were transferrable to work functions. *See Orn*,  
9 495 F.3d at 639. And, despite Plaintiff’s contention, Plaintiff’s part-time business of  
10 boarding dogs during the Intervening Timeframe cannot be considered sporadic. The Court  
11 therefore finds the ALJ’s adverse credibility determination was supported by substantial  
12 evidence. *See Burch*, 400 F.3d at 681.

### 13 **V. Conclusion**

14 Because the ALJ’s set forth clear and convincing reasons for discounting Plaintiff’s  
15 testimony of fatigue and myalgias based on her medical treatment and daily activities, the  
16 Court further finds the RFC adequately reflected the total limiting effects of Plaintiff’s  
17 impairments due to her Sjogren’s syndrome. Indeed, the RFC accounted for Plaintiff’s  
18 fatigue by limiting her to sedentary work and adopting NP Guiley’s recommendation that  
19 she “avoid operating any motor vehicles or machinery, or participating in hazardous  
20 activities if at all sleepy” (AR at 19, 21). The Court will therefore affirm the November  
21 Decision.

22 Accordingly,

23 **IT IS ORDERED** that the Administrative Law Judge’s November 23, 2021,  
24 decision is **affirmed**.

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1           **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to enter  
2 judgment accordingly and terminate this action.

3           Dated this 29th day of March, 2024.

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7           Honorable Diane J. Humetewa  
8           United States District Judge  
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